S.B.Cr.Misc. II Bail App. No. 4979/2007
(Mahesh Kumar Vs. State of Rajasthan)

Date of order : 21/11/2007

HON'BLE MR.H.R.PANWAR, J.

Mr. B.S.Rathore for the petitioner.

Mr. Ashok Upadhyay, Public Prosecutor.

This is second bail application. The first bail application came to be dismissed on 13.8.2007 when the matter was at the investigation stage. After rejecting the earlier bail application, the police has concluded the investigation and challan has been filed.

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned and challan papers.

It is contended by learned counsel for the petitioner that there is a cross case being FIR No. 39/07 police station- Gajner and in the cross case, the petitioner himself suffered the injuries. Apart from the petitioner, one Hari Kishan, Navneet @ Shambhoo and Uttamchand have also suffered the injuries. Hari Kishan suffered as many as seven injuries, Navneet @ Shambhoo suffered as many as five injuries, out of which two injuries are on occipital region of the skull. It is further contended that in the cross case, after investigation the police

prima-facie found that the complainant party namely Roopchand, Jagdish and Ramnath etc. committed a criminal trespass on the land belonging to the petitioner and his family members and as such in view of the conclusion arrived at by the police in the cross case, the injured were found to be the aggressors having committed the offence of trespass and caused injuries to the accused party as stated above. Learned counsel for the petitioner has invited my attention to the statements of three prosecution witnesses of CR No. 38/07 namely Shyamlal, Ramdev and Ramnath and contended that these three prosecution witnesses of this case categorically stated that the dispute arose with regard to the construction of community Choki on the land belonging to the accused party and there was material for construction i.e. bricks and stones and both the parties exchanged stones and bricks and suffered the injuries.

The witness Ramnath stated that Harimaharaj father of the present petitioner was constructing the house. The construction material was collected there including bricks, Bajri etc. In order to ascertain the building line, a rope was being put, at that time, the petitioner came armed with Barchhi, his father Harimaharaj and his brother Shambhoo also came. All these three stated that they would not allow the complainant party to construct a community Choki in front of their house. There was exchange of the words and started throwing bricks and stones against each

other. Injured Roopchand suffered injury on the skull and Jagdish also suffered injury and witness Ramnath also suffered injuries by stones on his back. There was exchange of stones by both the parties in which Harimaharaj etc. have suffered the injuries and thereafter both the parties went away. The dispute arose to construct a new community Choki in place of old one. Mahesh pelted the stones and caused injuries to Roopchand, Jagdish and this witness Ramnath. Similar is the statement of Shyamlal and Ramdev. In his statement, witness Ramdev stated that when Harimaharaj, Raja, Uttamchand and Mahesh came, the persons of Radheshyam Sarpanch, started pelting stones towards them, injured Roopchand and Jagdish are said to be of Radheshyam Sarpanch's party and in defence Raja, Uttamchand, Harimaharaj and Shambhoo also pelted stones by which Roopchand, Jagdish and Ramnath suffered the injuries and they were taken to hospital by Sarpanch Radheshyam. Injured Roopchand stated that the petitioner was armed with Barchhi, his father Harimaharaj was armed with Lathi and Shambhoo was armed with axe and all started pelting stones and stated that Mahesh inflicted a Bachhi blow on his head. Jagdish, the other injured person also stated that Harikishan Upadhyay, his son Mahesh and brother Shambhoo, Raja and Uttamchand came armed with Barchhi, Lathies and axe and started pelting stones. The villagers also gathered there and when he and Roopchand

started running, they were blocked and assaulted. Mahesh inflicted a Barchhi blow on his head. These two injured persons do not explain the injuries suffered by the accused party, whereas the other three witnesses namely Ramnath, Shyamlal and Ramdev categorically stated that accused party also suffered the injuries at the hands of the persons of the Sarpanch Radheshyam, they are Roopchand, Jagdish and others. Injured Roopchand suffered three injuries, one lacerated wound on the frontal region of the skull, remaining two injuries are abrasion 0.5cmx0.5cm on the right palm and 1cmx1cm on the left palm. All the injuries suffered by Roop Chand were found to be simple in nature by blunt object. The other injured Jagdish suffered lacerated wound on the middle part of forehead and other injury is abrasion 1cmx1cm on Chin. Both the injuries were caused by blunt object. On being examined by the Radiologist, on 12.6.2007, the Radiologist did not find any bony injury on the skull of injured Roopchand and reported that no evidence of bony injury. However, Jagdish on being examined by the Radiologist on 12.6.2007, it was found by Radiologist that X-ray skull shows that there is fracture of frontal bone and the Radiologist opined that injury No.1 is grievous in nature, however, it was made clear that final opinion will be given after C.T. Scan report and operation note if any. A C.T. scan of Jagdish was done and the doctor opined depressed fracture of

frontal bone near mid line, on the basis of which, the injury was opined to be dangerous to life. On 16.7.2007 by the very doctor who gave the opinion earlier on 20.6.2007 that the injury No.1 is grievous in nature. There is nothing on record suggesting any operation note etc. The very doctor who did not find the injury dangerous to life on 20.6.2007, opined the injury to be dangerous to life on 16.7.2007 almost after about one month.

Be that as it may, at the time of first bail, this material of the cross case was neither brought to the notice of the Court nor argued, Since after investigation, in both the cases, challan has been filed, the injured Roopchand and Jagdish were prima-facie found to be the aggressors having committed trespass on the land of the petitioner and his family members and the fact that both the parties suffered injuries including the injuries suffered by Navneet @ Shambhu one of the accused which are five in number, out of which two injuries are on skull as also Harikishan suffered seven injuries and the petitioner himself suffered the injuries and the fact that the prosecution witnesses stated that it was injured Roopchand and Jagdish who are men of Sarpanch Radheshyam and committed trespass on the land of the petitioner giving rise to the quarrel and both the parties exchanged the bricks and stones, the injury report shows the lacerated wound, whereas two injured i.e. Roop Chand and Jagdish Prasad stated that it was caused by Barchhi, whereas the

other three prosecution witnesses namely Ramdev, Shyamlal and Ramnath one of which i.e. Ramnath is injured, stated that there was exchange of bricks and stones and prosecution witness Ramdeo stated that Raja, Uttamchand, Harimaharaj, Mahesh (petitioner herein) and Navneet @ Shambhu pelted stones in their defence, without commenting on the merit of the case, whether the injury is caused by Barchhi or stones and the fact that Barchhi is sharp edged weapon, whereas injuries suffered by Roop Chand and Jagdish Prasad are by blunt object as per injury reports, having considered the oral arguments advanced by both the parties, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that petitioner Mahesh Kumar S/o Hari Kishan be released on bail in CR No.38/07 P.S. Gajner, district Bikaner, provided he executes a personal bond for a sum of Rs. 20,000/- with two sound and solvent sureties in the sum of Rs. 10,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR), J.

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